GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:1838
ANSWERED ON:15.03.2005
PATENTING PROVISIONS
Kushwaha Shri Narendra Kumar

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government has taken into consideration prior to Patent Ordinance, all the facets pertaining to the products requiring patenting so that it does not affect these products;

(b) if so, the details of the products which may be affected as a result of amendment to Patent Law (Patent Ordinanc

(e) despite its best efforts;

(c) whether effective measures have been taken to contain the negative effects of proposed amendment to Patent Law; and

(d) if so, the details of such measures taken by the Government to protect the interest of pharmaceuticals, agriculture, software, chemicals, fertilizers, insecticides, seeds, food sectors etc. ?

Answer

MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY (SHRI E.V.K.S. ELANGOVAN)

(a) to (d): As per the new patent regime introduced through the Patents (Amendment) Ordinance, 2004, effective from 1st January, 2005, patent rights to applications for medicines or drugs filed under Section 5(2) of the Patents Act shall accrue only from the date of grant of patent in India. Thus, the Indian manufacturers can continue to manufacture such drugs for which patent protection is not valid in India. Majority of the drugs already in Indian market, including those in the National List of Essential Medicines 2003, are off-patent and their pricing/availability would not get affected by the new patent regime. Therapeutic equivalents of the patented medicines are also available generally. Coupled with the pressure from prices of different drugs in the same therapeutic group, the paying capacity of Indian consumer is also expected to keep a check on the prices of patented medicines. The Government undertook broad-based and extensive consultations involving different interest groups on aspects of the patent law. These included scientists, academicians, economists, representatives of various industry sectors (such as pharmaceutical, biotech and software), chambers of commerce, private and public sector units, journalists, non-Governmental organizations, representatives of State Governments, lawyers and attorneys. The protective/public interest provisions of the patents law were comprehensively reviewed by the Joint Committee of Parliament, which examined the provisions of the Patents (Second Amendment) Bill, 1999. . As a result thereof, the existing law effectively balances and calibrates intellectual property protection with public health, national security and public interest concerns. The existing law has following provisions:

a. To ensure availability of products at reasonable price through compulsory licence. [section 84]
b. To deal with emergent situations or cases of public non-commercial use [section 92]

c. The provision relating to parallel import of patented product for ensuring availability of patented products at cheaper price to the consumers [Section 107 A(b)]

d. To ensure import of medicines by Government [section 47 (4)]

e. The Bolar provision pertaining to act of making, constructing, using or selling a patented invention merely for the purpose of submission of information to the regulatory authorities before the expiry of term of patent so as to allow swift transition of the patented products into the public domain immediately after the expiry of the term of the patent. This provision specially safeguards the interest of generic manufacturers [Section 107 A(a)]

f. For acquisition of patent right by Government [section 102]
g. To enable use of patent for research, experiment and education purpose [section 47 (3)]
h. To enable use of invention for the purposes of Government [section 100]
i. For revocation of patent for non-working in India [section 85]
j. For revocation of patent in public interest [section 66]